

Michael W. Sehestedt, MACo Chief Counsel for MACo in opposition to SB 285

### Outline of Testimony SB 285

- Current law provides for the payment of attorney fees to the Claimant whenever the insurer/employer denies benefits and the Workers' Compensation Court finds that the denial of benefits was unreasonable.
- This bill would make the insurer/employer liable for attorney fees, as ordered by the Workers' Compensation Court even if the insurer's action in denying medical benefits was reasonable if either the court or the insurer subsequently determined that medical benefits should be awarded.
- It seems fundamentally unfair to impose a penalty of attorney fees for an action reasonably taken by an insurer.
- If this bill becomes law it will increase the cost of providing workers' compensation in two ways: the first is the obvious increase occasioned by the need to pay attorney fees when a reasonable denial is either overturned by the court or when the insurer receives additional information and reverses a previous denial; the second is the less obvious but still real increase in medical payments that will result when even good faith reasonable denials can be penalized by the addition of attorney fees.
- The amount of this increase is difficult to determine but it is clearly real. This bill is not a new concept. It has been offered in almost identical form in each of the four preceding sessions. While the last two attempts in the 2007 (SB 426) and 2005 (HB 426) sessions did not have accompanying fiscal notes the first two attempts HB 296 in the 2003 session and HB 333 in the 2001 session did have fiscal notes prepared.
- While both the fiscal notes in the end determined that it was not possible to determine the fiscal impact of this legislation, the fiscal note prepared for the 2003 version of this bill made an honest effort.
- The fiscal note for HB 296 in the 2003 session, which was based solely on data from the State Fund, concluded in note 12 that: "Based on the above assumptions the maximum fiscal impact of this legislation would be estimated to be \$2,554,363 in each year of the biennium. However, many claims do not proceed to litigation before the Workers' Compensation Court so the actual number would be much less" Since the number is so large, even if much less meant only 40%, the annual cost of this bill in 2003 dollars will be over a \$1,000,000 per year to the State Fund alone.
- If the impact of this bill is multiplied by all the insurers in the state, the net effect is a charge, in effect a tax, amounting to millions of dollars on Montana business and government. Given the current state of the economy it is submitted that this is not the time to increase the cost of doing business or of government in Montana.